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List of issues and questions in relation to the eighth periodic report of Kenya

Addendum

Replies of Kenya*

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Note: The present document is being circulated in English, French and Spanish only.
* The present document is being issued without formal editing.

Please recycle

Constitutional and legislative framework and harmonization of laws

If provisions of the Convention have been invoked by courts

1. Kenya is a dualist state, therefore obligated to domesticate all the international treaties and conventions through the Treaty Making and Ratification Act 45 of 2012. The purpose of this Act is to give effect to the provisions of Article 2(6) of the Constitution and to provide the procedure for the making and ratification of treaties and connected purposes. The constitution overrides national law, and the courts have been upholding international law in its decisions as evidenced by the decision in Mary Mwaki Masinde v. County Government of Vihiga. The petitioner alleged discrimination on the grounds of marital status that led to her being denied employment in the County Government of Vihiga. The court in this matter, invoked article 2 of CEDAW, which obliges State parties to bind themselves to condemn discrimination against women. The Complainant was awarded three (3) million Kenya shillings (USD30,000) in damages for the discrimination. Further, the Supreme Court of Kenya in advisory opinion No. 2 of 2012 upheld the issue of progressive realization of the two-thirds gender rule by invoking article 4 of CEDAW which requires temporary measures aimed at accelerating de facto equality between men and women.[1]

2. The provisions of the Convention have also been invoked CEDAW in in judgements, including cases such as Court of Appeal decision in Rono Vs. Rono[2] and the High court decision in the case of Lerionka Ole Ntutu.[3] Notwithstanding, the Constitution takes precedence or supersedes any act of parliament. Further, Articles 1, 2(1) and 2(6) affirm that the constitution is the supreme law of the State and following this any convention that is ratified by the State shall become part of the laws of the State.[4] Kenya has ratified CEDAW therefore the Convention is part of the Constitution and ranks higher than Acts of parliament. In this case, CEDAW is applied as it is, and in the spirit of Article 2(6) of the Constitution.

Steps taken to ensure Kadhi courts are not exempted from constitutional equality provisions

3. Kenya's historical and unique circumstances in regard to the Kadhi's court, including the charged debate around the subject prior to the promulgation of the constitution in 2010, provides for its entrenchment in the constitution. The Kadhi courts, however, are not exempt from constitutional equality provisions and do not take precedence over the High court. Parties who profess the Muslim faith are at liberty to have their matters determined by the High Court instead of the Kadhi's Courts. There is also recourse for appeal in case parties are dissatisfied with the decision made by the Kadhi court in the High court. In this regard, parties are not disadvantaged by using Kadhi's courts. An example of such a move is in Civil Appeal No. 15 of 2013. In this case, a mother appealed to the High Court against the Kadhi's court decision in Mombasa which had given custody of her two children to her ex-husband. The High court judge overturned the Kadhi's court decision for its lack of jurisdiction. In another case, Mombasa High Court Succession Cause No.301 of 2014, (in the matter of the estate of S.P.B-deceased), in this case, the issue before the court was whether the High Court had jurisdiction to entertain a matter of succession in the estate of the deceased Muslim or whether it is the

[1] Article 93 of the constitution does not exist.
[2] See Court of Appeal Rono vs. Rono, available at www.kenyalaw.org.
[3] See Re Estate of Lerionka Ole Ntutu Case, available at www.kenyalaw.org.
[4] Kenya Law (2010). Constitution of Kenya. Retrieved from actview.xql?actid=Const2010# KE/CON/Const2010/chap_2.

Kadhi's Court that has exclusive jurisdiction. The court decided that the Kadhi's court did not have exclusive jurisdiction in Muslim matters.

Jurisdiction of Kadhi courts

4. Article 170 of the 2010 Kenyan constitution outlines the jurisdiction of the Kadhi court. The jurisdiction of the Kadhi's court is confined to matters and concerns of Muslim law which relate to personal status, marriage, divorce or inheritance, and on the condition that the parties involved profess the Muslim religion and subsequently submit to the jurisdiction of the Kadhi's courts.[5] Therefore, cases can only be brought to Kadhi courts by parties who are of the Muslim faith and who agree to abide and submit to the authority of the court. There is recourse for appeal in case parties are dissatisfied with the decision made by the Kadhi court, dissatisfied parties can appeal and move their case to the High court. This case shows that Muslim women have recourse for they are well-trained and not *ad hoc*, that is they are well qualified and knowledgeable in Islamic law. Part of the conditions of serving on the Kadhi courts are that the Kadhi is of Muslim faith and is knowledgeable on Muslim law as it applies to any sects of the Islam faith.[6]

5. The Kadhi courts Act 2010 (revised 2012), outlines that the Kadhi court is superseded by the High court and any other subordinate courts which are below the High court.[7] The cases heard at the Kadhi courts are also subject to judicial review and their records are to be kept and submitted to the High court. A Kadhi's court shall have and exercise the following jurisdiction, namely the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion; but nothing in this section shall limit the jurisdiction of the High Court or of any subordinate court in any proceeding which comes before it.[8]

Access to justice

National legal aid programme: financing, coverage and civil matters

Financing

6. Through Article 48 of the Legal Aid Act of 2016, women have been provided with access to justice in Kenya. There has been insufficient financing from government and development partners such as European Union (EU) and UN-Women have been funding the activities. Progress however has been made with the passing of the legal Aid of 2016. A nine-member board is in place to begin to operationalize the Act. The financing of its activities has also been factored in the 2017/2018 financial year. The programme will cover the whole country.

Coverage

7. Under the Legal Aid act 2016, there is a National Legal Aid Service whose functions include administering national legal aid scheme that can be accessed, and

[5] Kenya Law (2010). Constitution of Kenya. Retrieved from actview.xql?actid=Const2010#KE/CON/Const2010/chap_10/hc_chap_10/hc_part_XXIII/sec_170.

[6] Kenya Law (2010). Constitution of Kenya. Retrieved from actview.xql?actid=Const2010#KE/CON/Const2010/chap_10/hc_chap_10/hc_part_XXIII/sec_170.

[7] Kenya Law (2010) Kadhi court Act. Retrieved from Kenya/Legislation/English/Acts%20and%20Regulations/K/Kadhis%20Courts%20Act%20Cap.%2011%20-%20No.%2014%20of%201967/docs/KadhisCourtsAct14of1967.pdf.

[8] Kenya Law (2010) Kadhi court Act. Retrieved from Kenya/Legislation/English/Acts%20and%20Regulations/K/Kadhis%20Courts%20Act%20Cap.%2011%20-%20No.%2014%20of%201967/docs/KadhisCourtsAct14of1967.pdf.

is affordable for all Kenyans who require this. The national legal Aid and awareness programme has been running five pilot projects in Kenya between 2009 and 2012. The pilots are as follows Nairobi, focusing on family law (Marriage, divorce and division of matrimonial property) other pilots addressing other areas of law were implemented Nakuru, Mombasa, Kisumu and Eldoret. The pilots were meant to cover the nearby counties.

Marginalized groups

8. Other mechanisms in place to address access to justice include Court user's committees across the country, Mobile courts in remote areas of Kenya which target marginalized groups such as women, constitutional requirement for representation of both men and women to sit in traditional justice systems; court annexed mediation and the Small claims courts established under the small claims court Act, 2016 which targets the vulnerable litigants such as women.

Governing of dispute resolution: alternative dispute resolution mechanisms

9. Access to justice has been through the recognition of alternative dispute resolution systems all of which are subservient to the law.[9] This is defined as resolving disputes through alternative channels than the court system; the channels include negotiation, mediation, arbitration, reconciliation and the use of informal dispute resolution mechanisms.[10] Article 35 of the Legal Aid act outlines that legal aid provided is for a variety of cases including civil cases, criminal matters, family, constitutional issues, and public interest concerns.

Hierarchy: statutory, customary, Islamic and personal law

10. The Constitution is the supreme law of Kenya and therefore overrides any other Law. It recognizes alternative dispute resolution mechanisms to the extent that they do not contravene the provisions of the constitution. In so far as customary law is concerned, it can be applied in so far as it is not repugnant to justice and morality and does not contravene any provisions of the Constitution, such as the equality and non-discrimination provisions under article 27 and respect for the dignity of women under article 28. As such there are some possible areas where disputes can be governed by customary and Islamic law. In the case of Islamic courts, it is a case where both parties must submit to the decisions made. As previously mentioned Kadhi courts decisions are subject to review by the High court. Thus, individuals can also seek appeal of Kadhi court decisions at the High court level.

Women and peace and security

Women's representation/participation

11. The National Action Plan on Women, Peace and Security has been adopted and a secretariat set up for its implementation. The Plan is anchored in the constitutional values of gender equality, inclusion and participation. It places the 'individual' at the centre of security concerns as opposed to the 'state'. At county level, there are the District Peace Committees which have ensured representation of women in

[9] Republic of Kenya (2016). Legal Aid Act 2016. Retrieved from http://kenyalaw.org/lex/rest//db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/L/Legal%20Aid%20Act%20No.%206%20of%202016/docs/LegalAidAct6of2016.pdf.

[10] Republic of Kenya (2016). Legal Aid Act 2016. Retrieved from kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/L/Legal%20Aid%20Act%20No.%206%20of%202016/docs/LegalAidAct6of2016.pdf.

compliance with the affirmative action provisions of the Constitution (not more than two thirds gender rule.).

Addressing violent extremism

Radicalization

12. The impact of the Al-Shabaab insurgency can be seen in the way that women and girls are being radicalized and are engaging in violent extremism. For instance, three women bombed a Mombasa police station.[11] Also the Kenyan Government issued an INTERPOL warrant for the arrest of Samantha Lewthwaite popularly known as the 'white widow' for involvement in the September 2013 Al-Shabaab Westgate bombing.[12] As part of the increase of insurgency, women are also being abducted and radicalized, there are also instances where women are crossing over to neighbouring Somalia with the intention of joining Al-Shabaab as Jihadi brides. Beyond the economic factors, a study is to be conducted to establish the underlying causes of the emerging trend of female extremism. A government led nationwide campaign on women, peace and security has also been embarked on and a major component of the sensitization is preventing/countering violent extremism from a gender perspective.

National strategy

13. In response to the increasing cases of violent extremism in September 2016 the President launched a national strategy to counter violent extremism. Among the issues that the strategy seeks to address is to deploy accessible early warning and early intervention tools against radicalization that have the confidence of the public. It has a psycho-social pillar that provides for addressing the psychosocial needs of individuals who have been radicalized and even gone as far as joining violent extremist networks or groups the same support is extended to their families who often also experience trauma, fear and shame.

Re-radicalization and reintegration initiatives

14. The national strategy also provides for rehabilitation and re-radicalization programmes. Other Acts that the Government have been put in place for example the Prevention of Terrorism Act (POTA, 2012), the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA, 2009), and the Prevention of Organized Crime Act (POCA, 2010). A National Counter-Terrorism Centre (NCTC), an Anti-Terror Police Unit (ATPU) have also been established.[13] A good example of the POTA of 2012, which was invoked in the case of Nuseiba Mohammed Haji Osman who was suspected of being a member of terrorist group and intent on engaging in terrorist activities.[14] As a result the accused was required to surrender her passport to the Anti-Terror Police Unit (ATPU) and report to them fortnightly. The NCTC are working with women's organizations such as the Kenya Muslim Women Alliance (KEMWA) and Kenya Community Centre (KECOSCE) to counter violent

[11] The Standard Media (2016) Three female assailants killed in Mombasa police station attack. Retrieved from https://www.standardmedia.co.ke/article/2000215544/three-female-assailants-killed-in-mombasa-police-station-attack.

[12] The Mail and Guardian. Retrieved on 13 June 2017, https://mg.co.za/article/2013-09-27-00-terror-in-kenya-the-white-widow-and-the-sa-link.

[13] Government of Kenya and UNDP (20) Strengthen community's capacity against radicalization and violent extremism in Kenya. Retrieved from Counter%20Terrorism%20project%20Document%20FINAL.pdf.

[14] Kenya Law Criminal application no. Nai. 4 of 2016 (ur 4/2016); Retrieved from http://kenyalaw.org/caselaw/cases/view/124925/.

extremism and radicalization among women.[15] The Government is also enhancing greater cooperation with moderate Islamic theologians and Kenyan Muslim theologians to reach young women and improve education about the tenets of Islam.

National machinery for the advancement of women

National strategy and implementation of SDG 5

15. The national strategy for the advancement of women is anchored on the Constitution, Kenya Vision 2030 and its five year medium-term plans. Informed by this national documents, Kenya has developed the National Policy on Gender Equality and Women's Empowerment to comprehensively ensure that gender concerns are integrated in the national development process covering the two tiers of Government. The Policy document is also largely informed by SDG 5 targets. Kenya has also completed a baseline survey on SDG 5 to further ensure that interventions to be undertaken to enhance implementation of Goal 5 are well informed by this study.

National gender equality commission and gender directorate

16. The two machineries have been strengthened through restructuring, increased human and financial resources. The Gender Directorate has been enhanced through the establishment of the State Department of Gender Affairs in the Ministry of Public Service, Youth and Gender Affairs. For the first time in the history of Kenya, the Country has a full-fledged Department for Gender Affairs headed by a Principal Secretary. The budget has also improved and within a year, about 100 professional staff recruited drawn from different gender-related fields.

17. The National Gender Equality Commission and the Current State Department have responsibilities to do with: Policy, Gender mainstreaming, international treaties and conventions. The two Governments have distinct roles given that the work of the Gender Commission is purely oversight while the Department of Gender Affairs is to coordinate implementation gender related initiatives across sectors. The mandates and responsibilities are clearly laid out in the National Gender Equality Act and Executive Order of May, 2016. The responsibilities are further clearly outlined in the implementation structure of the National Policy on Gender Equality and the Women's Empowerment.

Deployment of gender officers in government ministries

18. The gender officers working with youth officers have been instrumental in: setting to establishment of gender mainstreaming committees, formulation of gender mainstreaming policies as well as work place policies to end gender based violence including the implementation structures. The have also monitored compliance with the 30% Access to Government Public Procurement Opportunities within their ministries including addressing the emerging challenges thus enhance access by women, youth and persons with disabilities.

19. Through the contribution of the officers, Kenya has developed systems to track and make public financial allocation for gender equality through the development of gender responsive budgeting guidelines. The budget guidelines that were issued in financial year 2016/17 made specific provisions to incorporate gender during the

[15] Government of Kenya and UNDP (20) Strengthen community's capacity against radicalization and violent extremism in Kenya. Retrieved from https://info.undp.org/docs/pdc/Documents/KEN/(Kenya%20rev%20270115)%20Kenya%20Counter%20Terrorism%20project%20Document%20FINAL.pdf.

development of medium term targets. In addition, efforts are being made in partnership with National Treasury to include gender in the classification of standard chart of accounts to track and make public allocations for gender equality and women's empowerment in Kenya as provided in SDG 5 indicators.

Gender and sex disaggregated data

20. A framework to consolidate data disaggregated by sex, age, ethnicity and disability has been initiated. Currently data is available in the following areas: Public Service Sector (Employment, appointments and promotions) Teachers Service Commission and the Universities.

Temporary special measures

Implementation of the not more than two thirds gender rule

21. The Chepkonga Bill and the Duale Bills were debated in parliament in 2015. In March 2017, Justice Mativo directed the Attorney General and Parliament to enact legislation in 60 days to implement two thirds gender rule. Failure to do so, the Judge said, any Kenyan can petition the Chief Justice of the Republic of Kenya to advise the President to dissolve Parliament.[16] The Government has thrown its weight behind the enactment of the bill towards the realization of articles 27 and 81 of the Constitution though, however this has not been fruitful. Beyond this, a national strategy to enhance support women in elective politics has been launched.

Other temporary measures

22. In the Public Procurement and Asset Disposal Act No. 33 of 2015, County governments are mandated to reserve 30 per cent of small and micro enterprise schemes for women and youth.[17] At the same time, at the national level, the Public Procurement and Asset Disposal Act 2015 asserts that 30 per cent of all procurements and assets disposal should be reserved for women, youth, and other marginalized groups. There is also a further 5 per cent out of the 30 per cent set aside for women with disability. Other measures include National Government Affirmative Action Fund (NGAAF), *Uwezo F*und, Youth Enterprise fund, Women enterprise fund, Cash Transfers for Persons Living with Disability and an increase of minimum wage under the minimum wages Act.

Stereotypes and harmful practices

Awareness creation

Involvement of elders

23. In the fight against FGM has brought on board more men in the fight agains. FGM who are male champions of the rights of girls to protection and education. This is evident among the Masai and Embu communities who have acknowledged that the practice negatively affecting development in their communities. Moreover, the provision of alternative livelihoods for reformed circumcisers increasingly leading to abandonment of the practice.

[16] The Court ruling on IEBC ensure that the 2/3rds gender rule is upheld (Justice Mutava).
[17] Kenya Gazette (2015) Special issue *Kenya Gazette Supplement No. 207 (Acts No. 3)*.

Community involvement

24. Targeting the law enforcement officers, traditional Council of Elders have been enhanced. Training of role models drawn from the areas with high prevalence of the practices has been undertaken. The targeted areas included: Wajir, Tana River, Meru, Tharaka Nithi, Elgeyo Marakwet, Bomet, Nyamira, Kajiado, Narok, Marsabit, Isiolo, Baringo, Samburu and West Pokot. The country has reached at least 1,530 of the target group. Exchange programmes for *Maa* community from Kajiado, Samburu and Narok around the harmful cultural practices that included 'beading' and female genital mutilation (FGM) have also been conducted. They resolved to hold dialogues in their respective '*Manyattas*' to engage residents to desist from such harmful practices.

Beading

25. Is a practice for a rite of passage among the Samburu people which entails young girls (as young as 9) being given beads and with this gift becoming engaged with Samburu morans.[18]

Education

26. A training Manual, *Stopping Medicalization of FGM* that targets medical has been developed for implementation to. It is aimed to create awareness and phased training of all health workers specifically in high prevalent areas such as Kisii, Samburu, Masai and Somali communities. This will address a number of issues: empower the health workers and bring in the issue of ethics and code of conduct for the health professionals. Progress has been made on the inclusion of FGM content in the new school curriculum. So far the pertinent and contemporary issues matrix has been developed and content has already been sequenced.

Prosecutions

27. The Office of the Director of Prosecution has taken up 76 cases which are different levels of prosecution. There are a number of alternative rites of passage that have been initiated in communities that consider female genital mutilation as a way of initiating the girls. Already the National Government has managed a buy-in by county governments led by County First Ladies. The Government has set aside funds for initiatives on girl child empowerment.

Partnerships

28. There is enhanced collaboration with County Governments to address budgetary issues at the County Level regarding the anti-FGM programming. For example, in the financial year — 2016/2017, West Pokot set aside about KES. 60 Million (USD 60,000) for initiatives on children, early marriages and FGM. Networks between state agencies and non-state actors have been established at the County level to combat harmful practices such as FGM and child marriage. The 2010 FGM policy has been reviewed and tabled in Cabinet for adoption.

Other measures

29. Several measures put in place. Enforcement of the Prohibition of Female Genital Mutilation Act (Chapter 62B of the Laws of Kenya). Certain individuals contravening the law have been prosecuted. For instance, in a case Criminal Appeal

[18] Samburu Girls Foundation. Retrieved on 11 June 2017.

6 of 2014, one woman was sentenced to seven years for performing FGM.[19] Prosecution has continued with a more recent case in 2015.[20]

30. Measures have also been undertaken to end child marriage through the Constitution which according to Article 45 (2) (Kenya Law, 2010) the right to marry can only be granted to adults. The constitution describes an adult is someone of 18 years and over. This article was invoked in the case of Constitutional Petition No 40 of 2011, where the petitioners were charged with exposing a young person to child marriage.[21] With said, the Marriage act 2014 is another measure against child marriage. The Act mandates that the age of consent for marriage is 18 years.[22] Sexual offences act can also be used to prosecute offenders.[23]

Reversing social norms and stereotypes

31. There is a recognition that county governments in Kenya are ensuring that they are taking measures to reverse social norms and stereotypes regarding the roles of men and women by undertaking public participation. Through such public participation there is an adherence to the 2/3rd gender principle, as part of measures to include women's voices and opinions in the public participation process and to reverse gender stereotypes. The basic education Act 2013 has also served to address the issue of eradicating and eliminating gender stereotypes. This has been upheld by ensuring that stereotypes are not perpetuated in learning materials. The provision of basic education is also part of doing away with traditional stereotypes regarding women and men. There are far reaching implications for the provision of such basic education.

Gender-based violence against women

Enforcement of legislation

32. The Protection from Domestic Violence Act, 2015 is a comprehensive legislation that offers protection and reliefs for women victims of gender based violence. The Sexual Offences Act 2006 also aims to protect victims of Gender Based violence. A 2014 National Crime Research report indicates that 45 per cent of Kenyan women between the ages of 15-49 have experienced some form of sexual or physical violence.[24] There have been steps taken to implement support services for victims of Gender based violence, through the establishment of one-stop shops at referral hospitals, and within some police stations there are gender desks. These have been used to report cases of GBV.

33. Courts have also been on the forefront in making decisions on sexual violence against women. For instance, on 27 May, 2013, the High Court in Meru delivered a landmark constitutional decision where a group of young girls successfully challenged the Kenya government on its inaction regarding sexual abuse of children, known as defilement.[25] The petition, which was symbolically filed on

[19] Kenya Law case database. Retrieved 11 June 2017, http://kenyalaw.org/caselaw/cases/view/101111/.

[20] See Kenya Law case *Criminal Case No. 543 of 2015*.

[21] Kenya Law Retrieved from http://kenyalaw.org/caselaw/cases/view/115306/.

[22] Laws of Kenya (2014) Marriage Act 2014. Retrieved from http://kenyalaw.org/lex//actview.xql?actid=No.%204%20of%202014.

[23] Constitutional appeal No. 40 of 2011.

[24] National Crime Research (2014) Gender Based Violence in Kenya. Report National Crime Research Centre Nairobi; Printed in Kenya Retrieved from http://crimeresearch.go.ke/index.php?option=com_phocadownload&view=categories&Itemid=496.

[25] Petition No. 8 of 2012, High Court of Meru, C.K. (A Child) and 11 Others v. Commissioner of Police/Inspector-General of the National Police Service and 2 Others [2012] Eklr.

11 October 2012 the first International Day of the Girl Child, was brought with the support of Equality Effect, an international collaborative research group under the auspices of the "160 Girls' Project". The action was filed in the context of a high prevalence of sexual violence against children in Meru County and indeed in the whole country. At the time, Kenya already had adequate legislation in the form of the Sexual Offences Act, 2006 which imposes stiff penalties for defilement and other sexual offences. However, the law's effectiveness has been marred by poor enforcement due to failure of the police to investigate complaints of sexual violence or arrest the perpetrators.

Reporting

34. A gender-based violence hotline (Dial 1195) was established launched in March 2017. This is an initiative of the Healthcare Assistance Kenya's GBV programme which augments the efforts to protect women and girls from gender based violence.[26]

Monitoring and evaluation framework

35. The framework was developed in 2011 and is under review. In addition all County facilities have dedicated staff and units where SGBV is treated as an emergency response to handle such cases. The Government has further spearheaded the formation of a national information system to capture and feed SGBV data in the following sectors: health, National Police Service, Office of Director of Public Prosecution (ODPP), Judiciary and Education/Teachers Service Commission.

Trafficking and exploitation of prostitution

Implementation of the Counter-Trafficking in Persons Act of 2010

36. A National Plan of Action has been developed and an Advisory Committee established. Some government institutions for example, the Ministry of Health have incorporated a module on human trafficking in the revised curriculum on Sexual and Gender Based Violence (SGBV) for health workers. The Government has also begun developing a data collection mechanism to improve tracking of anti-trafficking efforts across Kenya's 47 counties.

Victim Protection Act, 2013

37. Also seeks to improve support for all trafficking victims, including providing accommodation, food, medical treatment, psycho-social care, police protection, and the establishment of a fund to assist victims. During the reporting period, the Government allocated seven million Kenyan shillings ($70,000) to the victim assistance fund. The Government provided services to adult trafficking victims identified within the country or abroad. Kenya's diplomatic missions also provided some assistance to Kenyan trafficking victims, primarily by facilitating contact between victims and their families.[27] The Government has also embarked on deploying Labour attaches to Kenyan missions abroad, especially in the Middle East. New policies for Kenyans seeking employment opportunities abroad have been developed to ensure their work contracts comply with specific standards set within the ministry. In September 2015, a Ministry taskforce provided a report to the Cabinet Secretary concluding that, unskilled workers were the most vulnerable to exploitation and made recommendations for ways to address this issue as well as

[26] http://hakgbv1195.org/about-us/.

[27] https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258795.htm.

ways to regulate recruitment agencies, especially unregistered ones. Government funding and resource limitations remained a concern.

38. As far as implementation of the Victim Protection Act 2013, there has been progress and there is now a Victim Protection Board in place. The Kenya Law Reform Commission and the Attorney General's office are in the process of reviewing draft regulations and trust fund rules as part of implementation of the Act. A victim's rights charter has also been developed.

Data on trafficking

39. While the data on trafficking cases is not yet fully being disaggregated, in 2016, 762 suspected traffickers were prosecuted and 456 convictions recorded. Eighty-one cases ended in an acquittal. For the first time, the Government received law enforcement data from all 47 counties, partially contributing to the significant increase in reported prosecutions and convictions.[28]

Advisory Committee for the Counter-Trafficking in Persons Act 2010

40. As part of its annual workplan in 2016 developed standard operating procedures for prosecutors and trained approximately 50 trainers from key anti-trafficking stakeholders. The Advisory Committee through the represented offices and Department of Children's Services has been disseminating awareness materials and case studies in efforts to educate local communities on potential indicators of trafficking.

Training

41. The Government has provided anti-trafficking training for its diplomatic personnel. The Government's training for troops deployed overseas on international peacekeeping missions includes a module on human rights, addressing human trafficking.

Participation in political and public life

Provisions in the Constitution

42. The Constitution of Kenya has been employed to increase the number of women in appointed decision-making bodies in Kenya. The Constitution of Kenya 2010 has a 2/3rds gender principle under Article 81 which ensures that no more than 2/3rds of the members in elective public bodies should be from one gender. In addition, there are some rules guiding the composition of the National Assembly Article 97 (1) which outlines that there should be 47 women who represent each of the 47 counties, and there are 12 nominated members who are representing special interest groups including women, youth and persons with disabilities. Article 98 of the constitution also outlines the composition of the Senate which ensures that the 16 members are women nominated by political parties. At the county level, the county assemblies ensure that they attain the 2/3rd gender rule as per Article 177 (1), (b) through special seats in order to ensure that no more than 2/3rds of the members of the county assembly are of the same sex. These aforementioned measures ensure that women are able to participate in political and public life.

[28] https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258795.htm.

Implementation of the Constitution and related legislation

43. Kenya has enacted laws which together with recent reform of electoral laws through the Election Laws (Amendment) Act (2016) seek to enhance women's participation in electoral processes. The Electoral Offences Act (2016), seeks to further women's participation in the electoral process; the Political Parties Act (2016) also asserts that for a party to attain full registration, the party membership and composition of its governing body must reflect gender balance. Not more than two thirds of its governing body must be of the same gender. The Act establishes a Political Party Fund, a proportion of which must be used to enhance fairer gender participation and representation. Amendments to the Act through the Political Parties Act (Amendment) (No.2), 2016 seek to promote inclusive participation. For full registration, a party must include disaggregated data of its members; party constitutions shall ensure that not more than two-thirds of the membership of all party organs is of the same gender. The Political Parties Act (2016) is further amended by the Election Laws (Amendment) Act, 2016 which provides for distribution of 15 per cent of the Political Parties Fund proportionately to political parties qualifying based on the number of candidates of the party from special interest groups, including women. The Enactment of the Election Offences Act 2016 which contains provisions relating to free and fair elections and civic education by Independent Elections and boundaries commission to ensure the same.

Equality policy

44. A draft equality policy has been tabled to Cabinet for adoption. Kenya has domesticated the SDG's, by adopting SGD 5 indicators on tracking proportion of women in managerial positions indicator (5.5.2) and proportion of seats held women in national and county government. This has been factored in the Third Medium-Term Plan of Kenya Vision 2030 to be implemented in the next five years. The Government has also developed a National Strategy to support women vying for elective posts. The strategy implementation period goes beyond the General election in August.

Political violence

45. Various measures are being undertaken to prevent political violence in the face of the coming general elections:

(a) Country wide peace marches and prayers that are being organized by different actors including state actors;

(b) Mapping of hot spots where violence is likely to occur and setting up early warning systems;

(c) Consultative meetings have been held with women aspirant and the Cabinet Secretary in-charge of Security, the IEBC among other organs and assurance given on preparations underway to ensure security and stall any political violence;

(d) Monitoring of social media activity to prevent hate speech.

Nationality

Citizenship Act and the Constitution

46. The Constitution supersedes the Citizenship Act and can therefore be invoked to ensure that women and girls born outside Kenya from parents who are citizens are not rendered stateless.

Refugees and stateless women

47. The Kenyan Government has taken measures to address the challenges of statelessness faced by Nubians and the Makonde people. In the case of these tribes, the Government has issued identity cards and title deeds to the Makonde and categorized them as the 43rd tribe of Kenya. The issues facing Nubians have been addressed by being given title deeds. The Government has also appointed committees in Somali populated Counties to facilitate issuance of identity cards to all citizens of Somali origin. All children are being issued with birth certificates at dates of birth to eradicate the problem of registration in future.

Education

Affirmative action

48. The Government has taken the measure of providing free primary education and subsidized secondary education in order to increase the number of women and girls moving into secondary and university education. This affirmative action measure has a gender component which stipulates that there is a reduction of 2 points for female applicants who are seeking admission to degree programmes.[29] In the same placement policy there is a provision for lowering of admissions points for people from marginalized groups and persons living with disabilities. For instance, the reduction of 3 points of the entry marks for people with physical disabilities.[30] These affirmative action policies work towards gender parity and provide a more inclusive education system.

Protection of learners

49. The Teachers Service Act 2012 protects learners from abuse through the Teacher Service Commission denying registration of teachers who have committed an offence against a learner or those who have been convicted of a sexual offence committed against a learner.[31] Similarly, the Children's Act 2001, (revised 2011) provides safeguards against the abuse and sexual exploitation of children as set out in Section 15. At the same time the Reproduction Health Care Bill 2014 has been developed to ensure the protection of adolescents from sexual violence, physical violence and including cultural practices and norms that impinge on the reproductive health rights of the adolescents.

Employment

50. The high levels of child labour in Kenya are being recognized and are subsequently being addressed in the Convention on the Rights of the Child (CRC), and the adoption of the Palermo Protocol.

51. Kenya is also a signatory to the ILO's Decent Work Agenda, the objective of the decent work agenda is to provide opportunities for gender equity in both urban

[29] KUCCPS (2014) The Kenya Universities and colleges central placement service placement processing. Retrieved from 16042014_v1.pdf.

[30] KUCCPS (2014) The Kenya Universities and colleges central placement service placement processing. Retrieved from 16042014_v1.pdf.

[31] Laws of Kenya Teachers Service Commission Act No 20 of 2012. Retrieved from http://www.kenyaschoolforintegratedmedicine.org/wp-content/uploads/2014/09/Teachers-Service-Commission-Act_No20-of-2012.pdf.

and rural areas.[32] In addition there are two other ILO conventions pertaining to employment that Kenya ratified in 2001. These are the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) this first convention promotes gender equity and non-discrimination in employment which includes sexual harassment. The second convention is the Equal Remuneration Convention, 1951 (No. 100): this convention advances equal pay between men and women.[33]

Economic empowerment of women

52. Economic empowerment of women has been advanced through the Public Procurement and Asset Disposal Act which stipulates that 30 per cent of tenders are reserved for women. This stipulation ensures that women can work towards economic empowerment. The Kenya Constitution also assists in economic empowerment through Article 27 which asserts that both men and women are entitled to equal rights and equal opportunities in all aspects including economic and social areas.

Health

Maternal mortality

53. Measures are being taken to address the high maternal mortality rate in Kenya through the free maternity care policy which was instituted in 2013.[34] Regional disparities in access to health-care services are being addressed through the provision of ambulances at county level. The Government is also committed to engaging 30 nurses per constituency and 10 community health workers per constituency.[35]

54. A rapid situational analysis based on 2009 Kenya Population and Housing Census on the burden of maternal mortality and its distribution identified 15 counties as having the highest maternal mortality burden. These counties contribute about 50% of maternal deaths nationally. This Joint Programme on Reproductive Maternal Newborn, Child and Adolescent Health (RMNCAH) project is a six county initiative which was established in July 2015. It is currently running in Mandera, Wajir, Marsabit, Isiolo, Lamu and Migori counties. It focuses on efforts to increase access and improve quality of RMNCAH services; generate community demand for RMNCAH services; support institutional capacity-building at county and national level to deliver on RMNCAH and strengthen monitoring and evaluation systems at national and sub national levels.

[32] Republic of Kenya (2008) cited in The dynamics of trends of employment in Kenya Institute of Economic Affairs Kenya. IEA Research paper Series No 1/2010.

[33] National Gender and Equality Commission Retrieved from http://www.ngeckenya.org/Downloads/Mainstreaming-Principles-of-Equality-and-Inclusion-In-Business.pdf.

[34] Bourbonnais, N. (2013) Implementing Free Maternal Health Care in Kenya: Challenges, Strategies, and Recommendations. Kenya National Commission on Human Rights. Retrieved from http://www.knchr.org/Portals/0/EcosocReports/Implementing%20Free%20Maternal%20Health%20Care%20in%20Kenya.pdf.

[35] Bourbonnais, N. (2013) Implementing Free Maternal Health Care in Kenya: Challenges, Strategies, and Recommendations. Kenya National Commission on Human Rights. Retrieved from http://www.knchr.org/Portals/0/EcosocReports/Implementing%20Free%20Maternal%20Health%20Care%20in%20Kenya.pdf.

Achievements

55. Some of the achievements include equipment delivered to 507 additional health-care facilities and are now providing Emergency Obstetric and New born care (EmONC) services. Additional 14 Comprehensive emergency obstetric and New born care (CEmONC) centres were also operationalized increasing the access to comprehensive emergency obstetric and new born care. Significant improvements in service delivery were recorded for antenatal, postnatal and skilled birth attendance in all six counties. Demand for RMNCAH services has doubled due to innovative demand side financing initiatives, revamping of the community health strategy and use of mass media such as radio spots coupled with improvements in the supply side of health services. As a result of the programme, religious leaders are actively engaged in promotion of maternal health and advocacy against harmful practices such as FGM and child marriages which are prevalent in all programme counties. The programme has equally contributed to improved coordination and partnership structures at county level. The challenge of high maternal mortality rate has been addressed through a number of interventions by both national and county governments.

Devolution of the health function

56. The Constitution of Kenya 2010 gave the county governments mandate. As a result, there has been an increase of health facilities at the county level from 8,846 in 2013 to 10,032 in June 2016.

Free maternity services

57. This initiative was through a presidential directive with an aim of addressing access to health-care services and reducing maternal and neonatal mortality. So far, significant progress has been realized; maternal utilization and delivery uptake increased from 52% to 60%. Skilled delivery increased from 62% to 74%. Maternal mortality rate (MMR) declined from 488 to 362/100,000 (KDHS, 2014). Deliveries at home have declined while facility deliveries continue to increase. In addition, a conditional fund has been ring fenced for the Free Maternity where funds are distributed accordingly to County Governments for free services and subsidy.

Upgrading of health facilities in urban slums

58. This project was primarily initiated to address the social and economic challenges facing slum dwellers to access health-care services such as safe abortion. By the end the 2015/16 fiscal year, eleven (11) mobile facilities (clinics) had been established of which 8 are operational in Kibera slum in Nairobi City County. The Ministry of Health plans to put up additional 100 clinics in 12 major towns; similarly, mapping of the sites has been done and 80 sites so far identified for the work.

Health insurance subsidy programme

59. There has been initiatives both by County and National Governments aimed at contributing to better quality of life, poverty alleviation and human development through meeting population health needs; remove financial barriers to health care and reduce incidence of catastrophic health expenditures that will be realized by Consolidating and expanding social health subsidy mechanisms with view of achieving Universal Health Coverage (UHC). This project targets about 21,530 households of which 17,612 households have been registered to access health services from the hospital of their choice. The County Governments has also

initiatives on Universal Health Coverage to enhance accessibility and affordability of medical services so as to ensure not one is left behind.

Managed equipment service

60. The goal of this initiative is to improve access to comprehensive KEPH services by different constituents of Kenya's population. Specifically, the project is set to contribute towards acquisition of the requisite infrastructure and equipment to about 100 current level 4 county hospitals to the accepted norms and standards. This equipment is for Intensive Care Unit, theatre, surgical and X-Ray/imaging. Further these facilities will be fully equipped to enable them to provide a wide range of comprehensive health-care services as per the norms and standards and to aid the prompt diagnosis of non-communicable conditions.

Beyond Zero Campaign

61. There has been collaboration of the County Governments with the Beyond Zero initiative. The campaign was aimed at accelerating economic and social development in Kenya through a health facet. The campaign seeks a Kenya where there are no preventable deaths of mothers and children and no social inequities for essential health services. The achievements of the campaign include delivery of mobile clinics to all county referral hospitals in the country. By bringing health delivery closer to Kenya's citizens, the mobile clinics have been able to treat mothers and children who would otherwise have been obliged to walk miles to seek treatment.

National Hospital Insurance Fund

62. NHIF has expanded its range of products including contracted hospitals under three categories (A, B and C) to provide in patient medical cover with members enjoying full and comprehensive outpatient and inpatient services to cover maternity and medical diseases including surgery. Ministry of Health at the national and county levels will collaborate with the Attorney General and other stakeholders to undertake the requisite revision of sections 158, 228, 240 and 260 of the Penal Code.

Rural women

Legislation

63. Article 60 outlines the land policy in the Kenyan Constitution. This article asserts that there should be no gender discrimination as it pertains to land and property. The law of succession Act has also been used to ensure that girls and women are not disadvantaged when it comes to inheritance and succession. For instance, in the case of the Estate of Lerionka Ole Ntutu, the court invoked CEDAW and went against provisions in the Law of Succession to ensure that daughters of the deceased were able to inherit land.

64. This case reflected the earlier Court of Appeal decision in the case of Rono v. Rono which overruled customary Masai law.[36] The Law of Succession Act (cap 160) was used to arrive at this decision asserting that in the Act children include male and female children and furthermore there is no discrimination between sons and

[36] Kenya Law Re Estate of Lerionka Ole Ntutu (Deceased) [2008] eKLR. Retrieved from http://kenyalaw.org/Downloads_FreeCases/SUCCESION_CAUSE_No_1263%20OF%202000.pdf.

daughters and further no distinction between married and unmarried daughters.[37] The Kenya Law Reform Commission is also reforming the Law of Succession Act to align it to the Constitution by removing discriminatory provisions.

Internally displaced and marginalized groups of women

Affirmative action

65. Among the measures the State has undertaken to address the needs of particular groups of disadvantaged women, is the elaboration of Affirmative Action Social Development Fund to complement the existing Constituency Development Fund (CDF). The objective of the Fund is the socioeconomic empowerment of vulnerable women, youth, persons with disabilities, children and the elderly. Since 2014/15 financial year the government has disbursed Ksh. 6.29 billion shillings to the fund (US$ 610,679,611). Up to 20% of the fund is allocated to providing a financial facility for women through a revolving fund; support of value addition initiatives (e.g. light industries; construction of market and storage facilities) and carrying out of civic education and community sensitization on government programmes and policies such as the 30% procurement reservations targeting women.

Establishment of task force

66. The State has set up a task force to implement the ruling of the African Court on Human and Peoples Rights. The task force was expected to provide guidance on the political, security and economic implications of the Decision; examine the potential environmental impacts on Lake Bogoria and the surrounding area because of the implementation of the Decision; examine the practicability of restitution of Lake Bogoria and the surrounding area to the Endorois community taking into account that it is classified as a World Heritage Site by (UNESCO) and assess the amount of compensation payable to the Endorois community for losses suffered and for settlement of royalties owed from existing economic activities on and around the Lake.

Marriage and family relations

Polygamy

67. Is a strongly entrenched practice in customary communities and in Muslim marriages, leading to its entrenchment in the Constitution and in the Marriage Act, 2014. It is hoped that the practice will disappear with time. Most young people now find it economically burdensome to marry many wives and this will lead to its disappearance with time. However, the Kenyan Government has taken measures to ensure the protection of women in polygamous or Islamic marriages through the Marriage Act 2014, through requirement for their registration and equal treatment under the law. Therefore, those women in a polygamous union are provided with marital security as the law recognizes their marriage and therefore they can enjoy the rights and responsibilities similar to those of their counterparts in a monogamous marriage.

[37] Kenya Law Re Estate of Lerionka Ole Ntutu (Deceased) [2008] eKLR. Retrieved from http://kenylaw.org/Downloads_FreeCases/SUCCESION_CAUSE_No_1263%20OF%202000.pdf.

Legislation

68. The Matrimonial Property Act, 2013 also ensures that properties of wives in polygamous unions are safeguarded.[38] Sec. 8 provides that if the party in a polygamous marriage divorces or a polygamous marriage is otherwise dissolved, then matrimonial property acquired by the man and the first wife, before the man married another wife, shall be retained equally by the man and the first wife only. On the other hand, matrimonial property acquired by the man after the man marries another wife shall be regarded as owned by the man and the wives taking into account any contributions made by the parties. The Act also allows a wife in a polygamous marriage to hold her matrimonial property with the husband separate from that of the other wives. It implies that any wife can own matrimonial property equally with the husband without the participation of the other wife or wives. Spouses in marriages, including the man and any of the man's wives in the case of a polygamous marriage, have an interest in matrimonial property capable of protection by caveat, caution or any law in force on registration of title deeds. A spouse shall not, during the subsistence of the marriage, be evicted from the matrimonial home by or at the instance of the other spouse except by order of a court. A spouse shall not be evicted from the matrimonial home by any person except- in execution of a decree; by a trustee in bankruptcy; or by a mortgagee or chargee in exercise of a power of sale or other remedy as spelt out in Article 2(2) of the Act.

69. Regarding the Matrimonial Property Act 2013, women are supposed to prove contribution, even in the acquisition of the matrimonial home. A significant change, however, is that the Act considers both monetary and non-monetary contributions. Domestic work, child care, companionship, farm work and management of family businesses are taken into account as non-monetary contributions in this law.[39] This provision improves the situation of women from their previous position before the new law. Further, the requirement for proof of contribution is being challenged in court and hopefully, the court will decide in favour of automatic fifty-fifty sharing of matrimonial property by husbands and wives.

70. The new law on matrimonial property has developed new case precedence on this vital matter. Lady Justice Mary Gitumbi ruled in favour of a woman in a case where the husband had made 100% financial contributions in the development of the family home.[40] The learned judge reiterated that the current legal provisions in force apply based on the principle of equality. Furthermore, in U M M v. I M M in the civil suit 39 of 2012 Tuiyott J held that "The provisions of that Statute ameliorate the harshness that was associated with Echaria. Statute now recognizes the non-monetary contribution of a spouse. It however does not go as far as what the Court of Appeal had suggested in Nanjala William where it argued that Article 45(3) was perhaps "a Constitutional Statement of the principle that marital property is shared 50-50 in the event that a marriage ends." As far as I can see it is the provisions of Sections 2, 6 and 7 of The Matrimonial Property Act, 2013 fleshes out the right provided by Article 45(3). By recognizing that both monetary and non-monetary contribution must be taken into account, it is congruent with the Constitutional provisions of Article 45 (3) of The Constitution that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage. I take the view that at the dissolution of the marriage each partner should walk away with what he/she deserves." This

[38] Matrimonial Property Act, 2013: Each wife shares the matrimonial property with her husband according to the time they acquired it from the time of marriage.

[39] Ibid., Part 1, Section 2.

[40] C.M.N. v. A.W.M., High Court at Nairobi, Environmental and Land Case No. 208 of 2012.

judgement clarifies on the matter of equality within marriage and marital property distribution.

Optional Protocol and amendment to article 20 (1) of the Convention

71. In Kenya ratification of Optional Protocols and Conventions is governed by the Ratification of Treaties Act of 2013. Kenya has taken steps to give effect to the provisions of the Act by recently appointing a Registrar of Treaties as envisaged under the Act. The Registrar is expected to facilitate the ratification of the Optional Protocols.